

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.H., Appellant**

**and**

**DEPARTMENT OF THE ARMY, CORPS OF  
ENGINEERS, Philadelphia, PA, Employer**

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**Docket No. 19-0213  
Issued: May 9, 2019**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On November 6, 2018 appellant, through counsel, filed a timely appeal from a June 25, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

This issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted July 15, 2015 employment incident.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On July 16, 2015 appellant, then a 49-year-old administrative support assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2015 he injured his right hand and leg as a result of an employment-related motor vehicle accident. He noted that while driving, a vehicle attempted to make an illegal U-turn directly in front of his government vehicle, which caused him to strike the vehicle. The claim form did not indicate whether appellant had stopped work.

By decision dated August 31, 2015, OWCP denied appellant's traumatic injury claim. It found that the evidence of record was insufficient to establish that the July 15, 2015 incident occurred as alleged. OWCP also determined that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the work injury or event.

On April 27, 2016 appellant, through counsel, requested reconsideration. OWCP, by decision dated July 26, 2016, denied modification of its August 31, 2015 decision. Appellant, through counsel, requested reconsideration on December 5, 2016. By decision dated March 2, 2017, OWCP denied modification of its July 26, 2016 decision, finding that the medical evidence submitted did not contain a rationalized medical opinion explaining how the accepted July 15, 2015 employment incident had caused a diagnosed condition.

On June 14, 2017 appellant, through counsel, appealed to the Board. By decision dated February 7, 2018,<sup>4</sup> the Board affirmed OWCP's March 2, 2017 decision, finding that appellant had not submitted rationalized medical evidence sufficient to establish a medical diagnosis causally related to the accepted employment-related motor vehicle accident.

On March 29, 2018 appellant, through counsel, requested reconsideration with OWCP and submitted additional medical evidence in support of his claim. In a March 15, 2018 letter, Dr. Thomas P. Obade, an attending Board-certified orthopedic surgeon, noted that on February 26, 2018 he obtained additional history from appellant who related that he hit both knees at the time of the July 15, 2015 employment incident. He noted that bilateral knee x-rays ordered by a hospital emergency room physician on July 16, 2015 revealed no abnormal findings. Dr. Obade also noted that appellant had undergone arthroscopic knee surgery performed by Dr. Peter F. DeLuca, a Board-certified orthopedic surgeon. He related, however, that when he first evaluated appellant,

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<sup>3</sup> Docket No. 17-1405 (issued February 7, 2018).

<sup>4</sup> *Id.*

x-rays of the left knee showed severe narrowing of the medial cartilage space indicating progressive traumatic arthritis. Dr. Obade planned to obtain and review the July 16, 2015 x-rays, noting that there was no reason to believe that the x-ray report was not correct. He indicated that he had reviewed the Board's February 7, 2018 decision, which indicated that the medical evidence of record revealed that appellant had a preexisting bilateral knee condition at the time of his arthroscopic surgery. Dr. Obade, however, maintained that appellant's knee condition was not significantly symptomatic prior to the accepted July 15, 2015 employment incident. He also related that the Board's decision indicated that medical evidence revealed that appellant's left knee was functioning well prior to the accepted work incident. Dr. Obade maintained that, while appellant had injured both knees at the time of the accident, his left knee was more severely injured and he developed significant post-traumatic degenerative changes, which progressed as demonstrated by x-ray and required a total knee arthroplasty. He opined that his need to undergo total left knee arthroplasty was directly related to the employment-related July 15, 2015 motor vehicle accident. Dr. Obade explained that his opinion was based on a rapid progression of joint space narrowing and further joint surface articular damage of the left knee that occurred over approximately an eight and one-half- month period as verified by the progressive narrowing of the medial cartilage space of the left knee as demonstrated by x-ray. He further explained that his opinion was consistent with appellant's progressive left knee pain and the failure of Dr. DeLuca's arthroscopic surgery, which was performed in an appropriate manner, but had not resolved his injury. Dr. Obade related that rapid progression of osteoarthritis of the left knee with the above scenario was consistent with and directly related to the accepted employment incident. He concluded that it was unreasonable to assume that the progressive osteoarthritic changes of the left knee were a natural occurrence since they occurred in a rapid and progressive manner after the work-related motor vehicle accident.

OWCP, by decision dated June 25, 2018, denied modification finding that Dr. Obade had not provided a well-rationalized medical opinion sufficient to establish causal relationship between appellant's left knee condition and the accepted July 15, 2015 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>5</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

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<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>6</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup>

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted July 15, 2015 employment incident.

OWCP accepted that the July 15, 2015 employment incident occurred as alleged. The issue is whether appellant established that the incident caused a medical condition. By decision dated February 7, 2018, the Board affirmed OWCP's denial of his claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>10</sup> The Board will therefore not review the medical evidence addressed in the prior appeal.

Following the Board's review of the case, appellant submitted a report from Dr. Obade dated March 15, 2018. Dr. Obade opined that appellant's left knee osteoarthritis and total left knee arthroplasty were directly related to the accepted July 15, 2015 employment-related motor vehicle accident. He noted that x-rays revealing rapid progression of traumatic arthritis were consistent with the accepted employment incident, and that Dr. DeLuca's left knee arthroscopic surgery had failed to resolve appellant's injury. Dr. Obade, however, did not sufficiently explain how the accepted employment incident caused or aggravated appellant's left knee condition and produced

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<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> See *M.M.*, 18-1366 (issued February 27, 2019); *E.L.*, 16-0635 (issued November 7, 2016); *R.L.*, Docket No. 15-1010 (issued July 21, 2015). See also *A.P.*, Docket No. 14-1228 (issued October 15, 2014).

the need for the resultant surgery.<sup>11</sup> Further, while he noted that appellant's left knee condition was not significantly symptomatic prior to the accepted employment incident, the Board has held that an opinion that the claimant was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.<sup>12</sup> For these reasons, the Board finds that Dr. Obade's report is insufficient to establish appellant's claim.

The Board finds that there is no medical evidence of record which contains a reasoned explanation of how the July 15, 2015 employment incident caused or aggravated appellant's diagnosed left knee condition and resultant surgery.<sup>13</sup> Thus, appellant has not met his burden of proof.

On appeal counsel contends that Dr. Obade's March 15, 2018 report provided a rationalized opinion on causal relationship. For the reasons set forth above, Dr. Obade has not explained with medical rationale how appellant's left knee condition and the resultant need for surgery were caused or aggravated by the accepted July 15, 2015 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted July 15, 2015 employment incident.

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<sup>11</sup> See *M.M., id.; E.C.*, Docket No. 17-0902 (issued March 9, 2018); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof).

<sup>12</sup> See *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *F.H.*, Docket No. 18-1238 (issued January 18, 2019); *J.R.*, Docket No. 18-0206 (issued October 15, 2018).

<sup>13</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board